COR Ethics Training

2008

Learning Objectives

- **Understand rules for working with Contractors**
- **Understand ethical standards**
- **Understand prohibitions**

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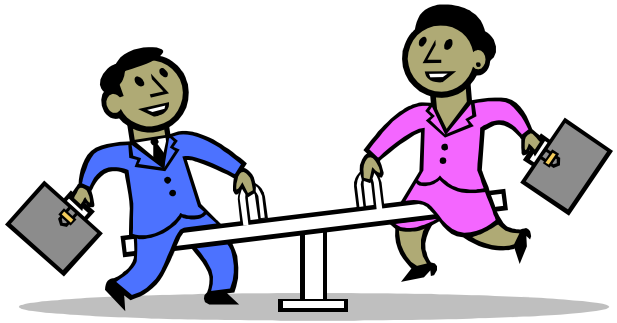
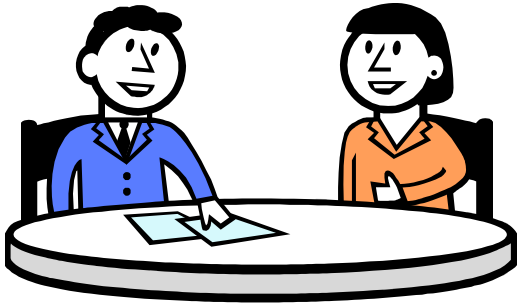
Working with Contractors in the Federal Workplace

Why Am I Here?



Modern Workplace

- **Contractors support the mission**



- **Contractors are perceived as “partners”**

Modern Workplace

- **But Contractors are NOT Government employees**
- **Conflict of interest rules N/A to Contractor employees -- even when:**
  - **Performing the same/similar work as Government employees**
  - **Working side-by-side with Government employees**

COR/Contractor Relationship BLUF

- **Public service is a public trust**
- **Your duties as a COR are to the Government**
- **Professional friendships are not prohibited…however…no favoritism or preferential treatment**
- ***Always*** **avoid a conflict of interest or appearance of a conflict of interest**

Traps for the Unwary COR

Information Security

- **18 USC 1905**
  - **Government employees may not divulge information received in the course of their employment or official duties**
  - **Punitive: fine and/or 1 year in prison**

Information Security

- **Do not discuss acquisition or sensitive information:**
  - **In areas that are not secure (e.g., bathrooms, hallways, DFAC)**
  - **At a meeting, until you know who is at the meeting**

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Information Security

Be aware of your surroundings!

OPSEC!!

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Gifts

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Gifts: BLUF

You may not accept a gift:

- **Because of your official position**
- **From a prohibited source (e.g., a Contractor)**

Conflicts of Interest

- **Joint Ethics Regulation, DoD 5500.7-R**
- **5 CFR 2635**
- **18 USC 201: Bribery/Kickback**
- **14 Principles of Ethical Conduct for Employees of the Executive Branch**

Definition of Gift

- **Anything of value, including cash or investment interests (e.g., stocks or bonds), with exceptions**

Not a Gift

- **Modest items of food, refreshments (coffee and donuts), but not a meal**
- **Greeting cards and items with little intrinsic value (plaques, certificates) intended only for presentation**
- **Commercial discounts available to the public or to all Government personnel**
- **Anything for which you pay market value (i.e., face value)**

Gift Exceptions

Gifts of $20 or less per occasion or $50 in a calendar year

- **Gifts of $20 or less per source per occasion, not exceeding $50 per calendar year from single source**
- **May decline gifts to keep aggregate value at $20 or less**
- **May not pay differential over $20 to retain gift**

Gift Exceptions

Gifts based on personal relationship

- **Gifts based on a personal relationship (family, good friend) rather than the position of the employee**
- **Consider history of the relationship and whether family member or friend personally pays for the gift**

Gift Exceptions

Commercial discounts available to general public or all Government or military personnel

- **However, you cannot accept discounts to subgroups based on rank, position or organization**

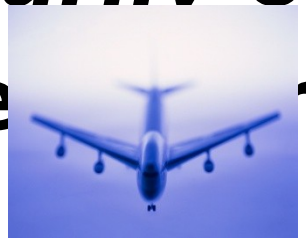
Gift Exceptions

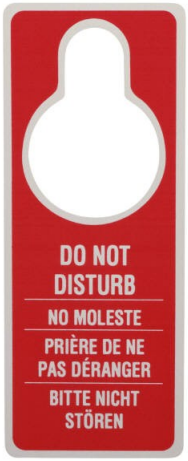
Gifts from prospective employers

- **Meals, lodging, transportation, etc,**

  ***IF, customarily* offered**

- **B must be rted**





Gift Exceptions

Gifts between Employees

- **Departing Soldiers**
- **Traditional gift-giving occasions**

However…

It is <u>NEVER</u> acceptable to:

- **Accept a gift in return for being influenced to perform an official act**
- **Accept gifts so frequently that a reasonable person would think you are using your office for private gain**
- **Public service is a public trust**

Misuse of Contractor Personnel

Prohibitions

- **Prohibition on personal services contracts (which make contractors appear to be Government employees)**
- **Contractor personnel cannot perform Federal functions**
- **FAR 37.104**

Remember Your Charter

- **Monitor contract compliance**
- **Do not interfere with Contractor-employee relations**
- **Do not tell Contractors to:**
  - **Hire or fire a particular employee**
  - **Reassign or discipline an employee**
  - **Grant or deny leave**
  - **Change employee duty hours**

Contractor-Employee Relationship

- **Contractor supervisor determines:**
  - **Who works what hours**
  - **Leave and other time off**
  - **Holidays worked**
- **No “59 Minute Rule”**
- **No fitness time**
- **Organization Day Picnic?**

Perhaps, if…

Traveling with Contractors

Transportation and Travel

- **General rule: Official travel of Government employee must be funded by the Government**
- **Sharing a vehicle can pose a problem**
- **Does it look bad?? Well, does**

Contractor Required to Provide Under Contract?

Transportation is acceptable if it is included in a contract between the Government and the Contractor. Contracts for on-site *inspections* may contain a provision requiring the Contractor to make available to the Federal employee reasonable assistance for carrying out those official duties.

Transportation Integral to a Site Visit?

If the Contractor offers transportation within a single site, it may be acceptable as transportation *integral to* the site visit. Such transportation is not gift because it does not have an independent market value, is not otherwise available, entails unique capabilities, or is of nominal value.

Travel Hypothetical

- **COR lives on lovely Camp Arifjan; Contractor employee lives downtown**
- **COR wants to purchase gifts for spouse; Contractor employee offers to take COR to local store**
- **Can COR still objectively monitor Contractor compliance with contract?**
- **Public service is a public trust**

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Army Contracting Command

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Awards and Certificates for Contractor Personnel

Awards

And yes, this includes coins

- **Awards programs are based on statute:**
  - **Military – 10 USC 1124, 1125**
  - **Civilian -- 5 USC 4511-4513**
- **NO statutory authority for giving coins to Contractors, so…cannot use funds to purchase coins**

Certificates of Appreciation

- **Do not use certificates to recognize Contractor or individual Contractor employees**
- **Complicates selection process on future contracts**
- **See also AR 600-8-22, 672-2**

Organizational Conflicts of Interest

Statement of Work

- **Contractor *cannot* provide both an item or service and corresponding**
  - **Item specifications**

    OR

  - **System or service work statement**
- **Unless the Contractor is the sole source or did not solely prepare SOW**

Proprietary Information

- **Contractors performing Government advisory and assistance services must:**
  - **Agree to protect information of other companies from unauthorized use or disclosure**
  - **Refrain from using the information for any purpose other than that for which it was furnished**

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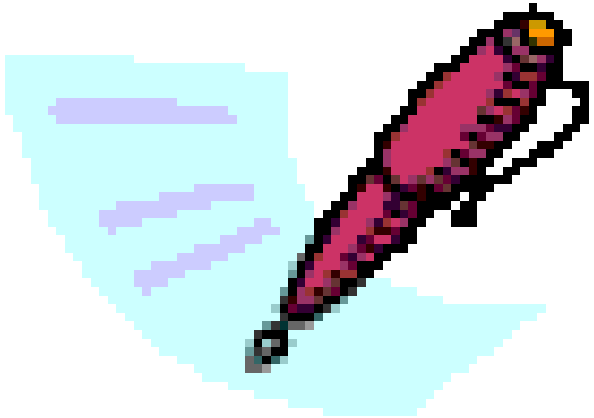
Procurement Integrity Act, 41 USC §423



Procurement Integrity Act (PIA)

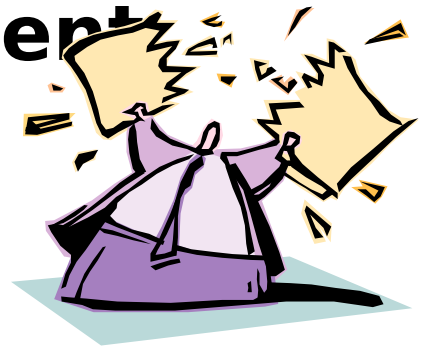
- **Ban on obtaining or disclosing Contractor bid or procurement info**
- **One-year ban on accepting compensation from certain Contractors after leaving Federal employment**
- **Requirement for procurement officials to report employment contacts with a Contractor**

Criminal/Civil Penalties for Disclosure

- **Imprisonment up to 5 years**
- **Up to $50,000 fine per violation plus twice the amount of compensation an individual or organization received or offered for th conduct**

Administrative Actions

- Cancellation of the procurement
- Disqualification of an offeror
- Rescission of the contract
- Suspension or debarment
- Adverse personnel action
- Other action in the best interest of the Government



Contractor Bid or Proposal Information (CBPI)

- **Cost or pricing data**
- **Indirect costs & direct labor rates, and overhead rates**
- **Proprietary information about manufacturing processes, operations or techniques marked by the Contractor**

CBPI Does NOT Include

- **Information already disclosed or made available to public**
- **Information disclosed by contractors**
- **Information disclosed pursuant to a proper request from Congress, Comptroller General, or Inspector General (if certain conditions met)**

PIA & Post-Government Employment

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One-Year Ban Rule

- **Federal employees who serve in one of seven positions or who make decisions on a contract over $10M may not accept compensation from the contractor for one year as an employee, consultant, officer or director**
- **Ban applies to officers, enlisted, civilians**

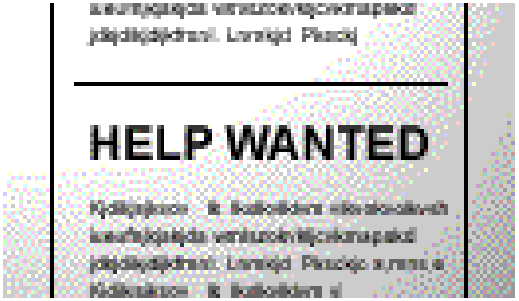
The Seven Positions

- **Procuring contracting officer**
- **Source selection authority**
- **Member of source selection evaluation board**
- **Chief of financial or technical evaluation team**
- **Program manager**
- **Deputy program manager**
- **Administrative contracting officer**

The Seven Decisions

- **Award a contract, subcontract, modification, or task or delivery order over $10M**
- **Establish rates applicable to a contract or contracts valued over $10M**
- **Approve issuance of a contract payment or payments over $10M**
- **Pay or settle a claim over $10M**

PIA & Reporting Contacts



- **If you are:**
  - **Participating personally substantially in a…**
  - **Competitive procurement…**
  - **Valued in excess of the simplified threshold (currently $1M OCONUS)**
- **And you contact or are contracted by a bidder or offeror in the procurement…**
- **You MUST**:

PIA & Reporting Contacts

- **Promptly report the contact in writing to your supervisor & ethics counselor**

and

- **Reject the offer**

or

- **Disqualify yourself from further involvement in the procurement**

Disqualification Actions

- To avoid violating the PIA:
  - Take no action
  - Written notice to supervisor (JER 2-204)
  - Supervisor response:
    - Written Recusal
    - Copy to Ethics Counselor & subordinates

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- We may operate as a team with our contractors, but we are in different lanes
- Avoid appearance problems
- Ask your ethics counselor!

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YOU MAKE THE CALL!

- ***The holiday weekend is fast approaching and your OIC invokes the "59-minute rule" for all members of the office – including the Contract support team.***
- Is it permissible to allow Contractor personnel to leave 59-minutes before their scheduled departure time?

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No!

YOU MAKE THE CALL!

- ***The day is going by fast and the boss has been tied up on a project. Bob, a former Soldier and friend who now works for a Contractor on the support contract, is going to the food court for lunch. You ask him to stop by "Chick-on-a-Stick" to pick up lunch for the boss.***
- Is it permissible to ask Bob to pick up lunch?

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No!

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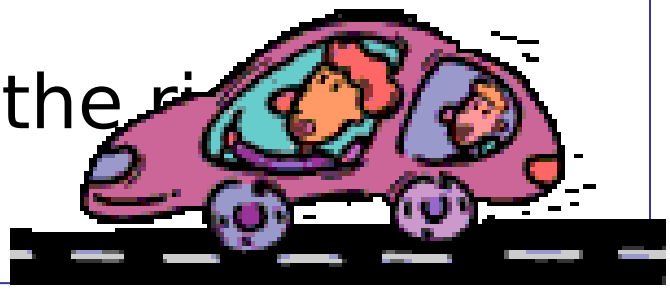
YOU MAKE THE CALL!

- ***A contractor employee offers to drive an Army employee to lunch at a restaurant ten miles off-post in his personal vehicle***.

- May the employee accept the ri



Answer: Probably not

Under $20? Perhaps…
Does it look bad?

YOU MAKE THE CALL!

- ***May commander's coins be given to Contractor employees?***

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Not only No, but He!!

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YOU MAKE THE CALL!

- ***A Contractor for your organization wants to offer ALL NCOs in your unit free tickets to the home opener for the Seattle Mariners! The Contractor hopes that this will further promote the partnership between Army and Contractor personnel. The tickets have a face value of $55 but the Contractor paid $20 each.***
- **May the NCOs accept the tickets?**

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No!

- **Contractor is a prohibited source, so no gifts are permissible unless an exception applies:**
  - **<u>$20/$50 rule</u>: No – Rule is "face value" not what Contractor paid**
  - **<u>General discount or benefit</u>? No – offered only to NCOs within your organization**
  - **<u>Personal Relationship</u>? No – offered because of status as NCO**

YOU MAKE THE CALL!

- ***Your unit is having an Organization Day. Place of duty for all employees is the post picnic ground or the office. The COR tells Contractor employees they must attend.***

- **Did the COR properly exercise his/her authority?**

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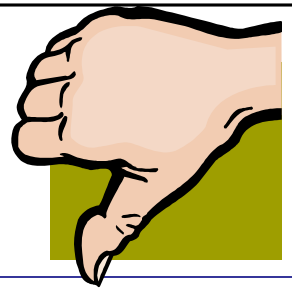

No!

- **CORs cannot interfere with the Contractor's management prerogative by "supervising" Contractor employees or otherwise directing their work efforts**
- **Unless Organization Day attendance is part of the Statement of Work, the Government cannot <u>REQUIRE</u> Contractor employees to attend**

HOWEVER…

- **Contracting employees CAN attend the Organizational Day activities**
  - **At their own expense and on their own time**
  - **Provided the Contractor allows them to attend**